

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION**

WILLIAM ALLEN KIRKLAND,)	
)	
Plaintiff,)	
)	
v.)	CIVIL ACTION NO.: 2:08-cv-86-WC
)	
ELMORE COUNTY COMMISSION, et al.,)	
)	
Defendants.)	

**DEFENDANT, ELMORE COUNTY COMMISSION’S,
MOTION TO DISMISS**

COMES NOW the Elmore County Commission, a Defendant in the above-styled cause, and moves this Honorable Court to dismiss the Plaintiff’s Complaint against it pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, as the Plaintiff’s Complaint, and its component parts, separately and severally, fails to state a claim against it upon which relief may be granted. As reasons for so moving, said Defendant states as follows:

1. The Elmore County Commission cannot be held liable for the actions of the Elmore County Sheriff or his Jail Administrator.
 - a. The Elmore County Commission cannot be held liable under a theory of *respondeat superior*.
 - b. The Elmore County Sheriff is not a final policymaker for the Elmore County Commission.
 - c. The Elmore County Commission has no authority over the activities of the Elmore County Sheriff’s Office.
 - d. Plaintiff has failed to allege that any policy of the Elmore County Commission was the moving force behind the alleged violation.
2. The Elmore County Commission is immune from punitive damages.

WHEREFORE, PREMISES CONSIDERED, the Defendant Elmore County Commission moves this Court to dismiss this action against it, pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, and grant unto it costs and attorney's fees pursuant to law and 42 U.S.C. § 1988.

Respectfully submitted this 10th day of March, 2008.

s/Daryl L. Masters
DARYL L. MASTERS (MAS018)
C. RICHARD HILL, JR. (HIL045)
Attorneys for Defendants

OF COUNSEL:

WEBB & ELEY, P.C.
7475 Halcyon Pointe Drive (36117)
Post Office Box 240909
Montgomery, Alabama 36124
Telephone: (334) 262-1850
Fax: (334) 262-1889
E-mail: rrobertson@webbeley.com

CERTIFICATE OF SERVICE

I hereby certify that on this the 10th day of March, 2008, I have electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will provide notice to the following CM/ECF participant: **J. Scott Hooper, Esquire.**

s/Daryl L. Masters
OF COUNSEL